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4 **UNITED STATES DISTRICT COURT**  
5 **DISTRICT OF NEVADA**

6 \* \* \*

7 HELEN GREEN,

8 Plaintiffs,

9 vs.

10 TEAMSTERS LOCAL 995, TEAMSTERS  
11 JOINT COUNCIL 42, AND  
12 INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, MIKE MAGNINI AND  
BILL BURGOS,

13 Defendants.  
14

2:09-CV-02184-PMP-RJJ

**ORDER**

15 Before the Court for consideration are the Motions of Defendants Michael  
16 Magnini and William Burgos to Dismiss Plaintiff's Second Amended Complaint, or  
17 in the Alternative for a More Definite Statement (Doc.'s #43, #44), filed on July 20,  
18 2010. Plaintiff filed a consolidated Opposition to Defendants' Motions (Doc. #51)  
19 filed August 20, 2010, and Defendants filed Reply Memoranda's (Doc.'s #52, #53)  
20 filed August 28, 2010.

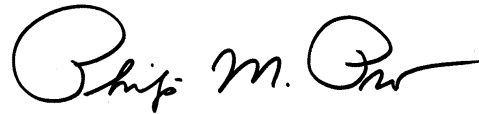
21 Defendants Magnini and Burgos argue that after three successive attempts  
22 to do so, Plaintiff still failed to sufficiently plead a claim for relief in her Second  
23 Cause of Action, described as "Pendent State Law Claims Against Magnini and  
24 Burgos" which is phrased in a manner as to suggest that it was intended to constitute  
25 a claim for intentional infliction of emotional distress, and assault. The Court finds  
26 that beyond stating the elements for the torts of intentional infliction of emotional

1 distress and assault, the conclusory allegation set forth in the second claim for relief  
2 of Plaintiff's Second Amended Complaint are insufficient to allege a plausible  
3 entitlement to relief. Therefore, dismissal in accord with Rule 12 (b)(6) of the  
4 Federal Rules of Civil Procedure and Ashcroft v. Iqbal, U.S. 129 S.Ct. 1937 (2009)  
5 and Bell Atlantic Corporation v. Twombly, 550 U.S. 544 (2007), is warranted.

6 Additionally, although in her Opposition (Doc. #51) Plaintiff seeks leave to  
7 file a Third Amended Complaint, Plaintiff has failed to file a copy of the proposed  
8 "Third Amended Complaint" or to clearly state what additional facts Plaintiff would  
9 plead with regard to the Second Cause of Action should leave be granted. The Court  
10 finds no good cause to permit further amendment to Plaintiff's Complaint as to  
11 Defendants Magnini and Burgos.

12 **IT IS THEREFORE ORDERED** that the Motions of Defendants  
13 Michael Magnini and William Burgos to Dismiss Plaintiff's Second Amended  
14 Complaint, or in the Alternative for a More Definite Statement (Doc.'s #43, #44) are  
15 **GRANTED**, and Plaintiff Helen Green's Complaint is hereby **DISMISSED** with  
16 prejudice as to Defendants Magnini and Burgos.

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18 DATED: September 14, 2010.

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21 PHILIP M. PRO  
22 United States District Judge  
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